

May 15, 2009

MINUTES
ILLINOIS CIVIL SERVICE COMMISSION
May 15, 2009

I. OPENING OF MEETING AT 1:28 P.M. AT 400 WEST MONROE STREET, SUITE 306, SPRINGFIELD, ILLINOIS

II. PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba (via telephone) and Ares G. Dalianis (via telephone), Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; Roneta Taylor and Bill Lipsmire, Illinois Department of Central Management Services; and Luke Ginder, Office of the Illinois Attorney General.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD APRIL 17, 2009

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND THE MOTION ADOPTED 4-0 TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD APRIL 17, 2009.

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

A. Report on Exempt Positions

<u>Agency</u>	<u>Total Employees</u>	<u>Number of Exempt Positions</u>
Aging	162.....	9
Agriculture	439.....	17
Arts Council.....	21.....	2
Capitol Development Board	42.....	0
Central Management Services	1,490.....	110
Children and Family Services	3,139.....	49
Civil Service Commission	4.....	0
Commerce & Economic Opportunity	439.....	69
Commerce Commission.....	72.....	0
Corrections.....	11,590.....	116
Criminal Justice Authority	56.....	6
Deaf and Hard of Hearing Comm.	7.....	1
Developmental Disabilities Council	11.....	1
Emergency Management Agency	94.....	6
Employment Security.....	1,796.....	25
Environmental Protection Agency	965.....	19
Financial & Professional Regulation	744.....	50
Guardianship and Advocacy	105.....	8
Healthcare and Family Services.....	2,416.....	28
Historic Preservation Agency	191.....	12
Human Rights Commission	14.....	2
Human Rights Department	145.....	10
Human Services	14,209.....	77
Investment Board.....	3.....	2
Juvenile Justice	1,178.....	20
Labor.....	80.....	7
Labor Relations Board Educational	12.....	2
Labor Relations Board State	19.....	2
Law Enforcement Training & Standards Bd.....	21.....	1
Medical District Commission	2.....	0
Military Affairs	126.....	3
Natural Resources	1,331.....	24
Pollution Control Board.....	19.....	2
Prisoner Review Board	20.....	0
Property Tax Appeal Board	22.....	1
Public Health.....	1,133.....	44
Revenue	2,112.....	70
State Fire Marshal	147.....	13
State Police	1,404.....	6
State Police Merit Board.....	6.....	1
State Retirement Systems	81.....	2
Transportation.....	2,391.....	0
Veterans' Affairs.....	1,141.....	7
Workers' Compensation Commission	169.....	10
TOTALS	49,568.....	834

B. Governing Rule - Jurisdiction B Exemptions

- a) Before a position shall qualify for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the position shall be directly responsible to:
 - 1. The Governor, or
 - 2. A departmental director or assistant director appointed by the Governor, or
 - 3. A board or commission appointed by the Governor, or
 - 4. The head of an agency created by Executive Order, or the director or assistant director of an agency carrying out statutory powers, whose offices are created by the Governor subject to legislative veto under Article V, Section 11, of the Constitution of 1970, which agency head, director, or assistant director may themselves be subject to exemption under Section 4d(3), or
 - 5. In an agency having a statutory assistant director, a deputy director exercising full line authority under the director for all operating entities of the agency, provided the statutory role of assistant director is vacant or is assigned clearly distinct and separate duties from the deputy director and as a colleague to him, or
 - 6. A line position organizationally located between the director and/or assistant director and a subordinate statutorily exempt position(s), provided the position proposed for exemption has line authority over the statutory exempt position(s), or
 - 7. The elected head of an independent agency in the executive, legislative, or judicial branch of government.

- b) If a position meets the above criterion, it must, in addition, be responsible for one or more of the following before it shall be approved as exempt:
 - 1. Directs programs defined by statute and/or departmental, board, or commission policy or possess significant authority when acting in the capacity of a director of programs to bind the agency.
 - 2. Makes decisions in exercising principal responsibility for the determination or execution of policy which fix objectives or state the principles to control action toward operating objectives of one or more divisions, such decisions being subject to review or reversal only by the director, assistant director, board, or commission.
 - 3. Participates in the planning and programming of departmental, board, or commission activities, integrating the plans and projections of related divisions, and the scheduling of projected work programs of those agencies.

* * *

C. Requests for 4d(3) Exemption

- None submitted.

Executive Director Daniel Stralka requested a clarification from the Commission on an issue regarding limited term exemptions. He became aware of several limited term exemptions that had expired without the agency requesting an extension but these positions were still coded as Section 4d(3) exempt and, in some cases, individuals remain appointed to these expired positions. Executive Director Stralka requested a clarification from the Commission that when a position is granted a limited term exemption, the exemption expires at the time established by the Commission when it was originally granted without the need for any further Commission action such as notice of rescission. Chairman Kolker noted that the Commission has been generous to requesting agencies in this regard by agreeing to limited term exemptions for qualifying positions to meet their short-term personnel needs. He also noted that requesting agencies have been advised at past meetings that if there is a need to extend a limited term exemption that they must submit such an extension request to the Commission prior to its expiration. The rest of the Commissioners concurred with Chairman Kolker that limited term exemptions expire at the end of the term period without any further action of the Commission and retention of employees in these positions past that time may constitute a violation of the Personnel Code. Chairman Kolker instructed Executive Director Stralka to notify all agency directors of their existing limited term 4d(3) exempt positions and to advise them that these exemptions will expire at the end of the term without further notice from the Commission. In addition, it was the consensus of the Commission that a set expiration date for any future limited term exemptions be established upon approval.

V. CLASS SPECIFICATIONS

The following class titles were submitted for abolishment and revision by the Director of Central Management Services:

Position Titles:

- A. Public Aid Appeals Advisor (abolish)
- B. Technical Advisor I (revise)
- C. Technical Advisor II (revise)
- D. Technical Advisor III (revise)
- E. Employment Security Service Representative (revise)

Items A, B, C, and D: Assistant Executive Director Andrew Barris informed the Commission that the basis for the abolishment of the Public Aid Appeals Advisor and the revision to the Technical Advisor I, II, III classes was necessary because the agency was incurring late penalties upwards of \$16,000 per month as a result of the current hearing

officers' ability to meet deadlines in holding hearings and/or writing opinions. The Public Aid Appeals Advisor class did not require a college degree of the hearing officers. Bill Lipsmire, from Technical Services at the Department of Central Management Services, informed the Commissioners that the abolishment and revision of the above classes was necessary to get qualified candidates with a legal background to act as hearing officers.

Item E: Assistant Executive Director Barris informed the Commission that the purpose behind the revision to the Employment Security Representative class was necessary as a result of the downturn in the economy. In order to ensure that representatives are available to provide both unemployment insurance benefits to unemployed workers, and job services to help displaced workers to find new employment opportunities, the experience requirement of the class was reduced from two years to one year as a full-time professional employee with the Illinois Department of Employment security, or five years of (as opposed to six years) professional experience in personnel administration.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO APPROVE THE ABOLISHMENT AND REVISION OF THE FOLLOWING CLASS TITLES TO BE EFFECTIVE JUNE 1, 2009.

- A: **Public Aid Appeals Advisor (abolish)**
- B: **Technical Advisor I (revise)**
- C: **Technical Advisor II (revise)**
- D: **Technical Advisor III (revise)**
- E: **Employment Security Service Representative (revise)**¹

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.

¹ There was a second motion made on Item E: Employment Security Service Representative to make the revision effective May 16, 2009 (see page 10).

May 15, 2009

VI. MOTION TO GO INTO EXECUTIVE SESSION

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND BY ROLL CALL VOTE THE MOTION ADOPTED 5-0 TO HOLD AN EXECUTIVE SESSION PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), AND 2(c)(11) OF THE OPEN MEETINGS ACT.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

VII. RECONVENE MEETING

Upon due and proper notice the regular meeting of the Illinois Civil Service Commission was reconvened at 400 West Monroe Street, Suite 306, Springfield, Illinois at 2:10 p.m.

PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba (via telephone) and Ares G. Dalianis (via telephone), Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; and Luke Ginder, Office of the Illinois Attorney General.

VIII. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e. emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code, however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Department of Central Management Services' Consecutive Non-Merit Report.

Agency	3/31/09	4/30/09	4/30/08
Aging	1	1	0
Agriculture	1	0	1
Central Management Services	2	2	6
Children and Family Services	4	9	7
Commerce and Economic Opportunity	1	0	1
Criminal Justice Authority	1	1	0
Employment Security	2	3	2
Financial and Professional Regulation	0	0	1
Healthcare and Family Services	9	17	3
Historic Preservation	0	0	4
Human Services	0	1	3
Law Enforcement Training Standards Board	0	1	0
Natural Resources	0	0	4
Property Tax Appeal Board	0	0	2
State Police	0	0	0
State Retirement Systems	0	0	2
Transportation	5	3	25
Veteran's Affairs	1	2	2
Workers' Compensation Commission	1	1	0
Totals	28	41	63

IX. PUBLICLY ANNOUNCED DECISION RESULTING FROM APPEAL

• DISCHARGE

DA-9-09

Employee	Josie Day	Appeal Date	9/02/08
Agency	Juvenile Justice	Decision Date	5/01/09
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Used a recording device to tape record co-workers without authorization; misuse of state property	Recommended Decision	Charges are proven and warrant discharge.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AMEND AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES FOR DISCHARGE HAVE BEEN PROVEN, BUT DO NOT WARRANT DISCHARGE DUE TO DAY'S 15 YEARS OF CONTINUOUS SERVICE WITH NO PRIOR DISCIPLINE. FURTHERMORE, THERE IS NO EVIDENCE THAT DAY'S ACTION IN TAPE RECORDING HER CO-WORKERS WAS PREMEDITATED OR DONE WITH THE REQUISITE LEVEL OF MALICIOUS INTENT.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

• DISCHARGE

DA-10-09

Employee	Raquel Torres	Appeal Date	9/12/08
Agency	Agriculture	Decision Date	5/01/09
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Conduct unbecoming; inappropriate language; insubordination; failure to comply with verbal instructions	Recommended Decision	Charges are partially proven and warrant 30-day suspension.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES FOR DISCHARGE HAVE BEEN PARTIALLY PROVEN, BUT GIVEN THE UNIQUE FACTUAL CIRCUMSTANCES SURROUNDING THE DISCHARGE FOR THE REASONS SET FORTH IN THE RECOMMENDED DECISION

DATED MAY 1, 2009, THE PARTIALLY PROVEN CHARGES DO NOT RISE TO THE LEVEL WHICH SOUND PUBLIC OPINION RECOGNIZES AS GOOD CAUSE FOR THE EMPLOYEE TO NO LONGER HOLD THE POSITION. THEREFORE, SAID PARTIALLY PROVEN CHARGES WARRANT A 30-DAY SUSPENSION IN LIEU OF DISCHARGE.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

X. REPORT ON THE TREATMENT OF PRIOR DISCIPLINARY INCIDENTS WHICH ARE THE SUBJECT OF PENDING GRIEVANCES

Assistant Executive Director Barris made the following presentation:

The Supreme Court held in United States Postal Service v. Gregory, 122 S. Ct 431, that the Merit Systems Protection Board could independently review a U.S. Postal Service employee's prior disciplinary actions pending in grievance when reviewing the employee's discharge so long as:

- the employee was informed of the pending action in writing;
- the action is a matter of record;
- the employee was given the opportunity to dispute the charges to a higher level than the authority that imposed the discipline.

If these conditions are met, review of prior disciplinary action may occur so long as it is limited to determining whether the unresolved grievance is clearly erroneous. Chairman Kolker and Commissioner Dalianis requested a copy of the citation for their review and they requested this matter be carried over until the June 19, 2009 meeting.

XI. STAFF REPORT

Executive Director Daniel Stralka reported that:

- Statements of Economic Interest were filed on April 30. All Commissioners should have received receipts from the Secretary of State in the mail.
- He and Sandy Guppy attended the fiscal year 2010 Senate Appropriations hearing on May 6, 2009.
- The Benefits Choice options period ends May 31.

May 15, 2009

In addition, Executive Director Stralka reported on the status of HB4450 which in its current form would result in the removal of all five Civil Service Commissioners and all four Commission employees unless reappointed by the Governor within 60 days of its effective date. The Commission was only one of dozens of agencies, boards, and commissions that would be similarly impacted. A general discussion then ensued among the Commissioners. Executive Director Stralka indicated he was continuing to monitor this legislation.

XII. ANNOUNCEMENT OF NEXT MEETING

Announcement was made of the next regular meeting to be held on Friday, June 19, 2009 at 11:00 a.m. in the Commission's Chicago office.

XIII. CLASS SPECIFICATION - REVISION

Central Management Services requested that the approval for the revision of the Employment Security Service Representative be effective immediately, as opposed to June 1, 2009.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO APPROVE THE REVISION OF THE FOLLOWING CLASS TITLE TO BE EFFECTIVE MAY 16, 2009 AND NOT JUNE 1, 2009 AS PREVIOUSLY APPROVED.

E: Employment Security Service Representative (revise)

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

XIV. MOTION TO ADJOURN

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS AND THE MOTION ADOPTED 5-0 TO ADJOURN THE MEETING AT 2:38 P.M.